

Serial No.: 10/633,951

Attorney Docket No. OSA001-213473

REMARKS

Claims 1-22 are pending in the application. Claims 23 and 24 are added in this response. Pursuant to the attached fee transmittal sheet, the commissioner is authorized to the fee of \$50.00 to Deposit Account 50-2989 for these two additional claims.

Applicants' attorney wishes to thank the Examiner for the telephone interview held on March 10, 2005. The Examiner's comments were most helpful. Applicants have amended the claims herein in accordance with the Examiner's suggestion and it is hoped that the claims are now allowable.

1. § 103(a) Rejection over U.S. Patent No. 4,044,857 to Guerette in view of U.S. Patent No. 6,189,653 to Laug and 103(a) Rejection over U.S. Patent No. 1,439,388 to Willett in view of U.S. Patent No. 6,189,653 to Laug

Independent claims 1, 11, 19 and 22 have been rejected as being obvious in view of Guerette or Willett in combination with Laug.

None of the references cited by the Examiner demonstrate or suggest, together or in combination, a ladder that can be collapsed and stands in either the open or collapsed position. This is a feature that is extremely useful, among other places, in modern warehouse type stores. In such stores, inventory is stored in the same area that consumers walk through. It is thus very desirable to have a ladder that is easily collapsed into a position that takes a minimum amount of space.

Willett shows a ladder that is collapsible but cannot stand in the closed position. When closed, the Willett ladder lays on the floor, which takes up a lot of space and is in the way of consumers and workers, or must be leaned against a wall or rack for support.

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Guerette discloses a collapsible ladder, but one that does not stand when it is in the closed position. Like Willett, in the closed position the Guerette ladder lays on the ground (see Figure 3) which takes up a lot of space and gets in the way of consumers and workers.

Neither Guerette or Willett disclose a ladder with a support of adjustable length. The Examiner has cited Laug for this element of the claims. However, Laug does not teach or suggest a collapsible ladder that stands in the closed position. In fact, Laug does not disclose a ladder at all, but instead discloses scaffolding. Even if one were motivated to combine Laug or with Guerette or Willett the present invention would not be obvious since scaffolding in general, and Laug in particular, does not stand in the closed position but is collapsed and disassembled when not in use. There is no suggestion, express or implied, in any of these references to combine them into a ladder that stands in both the open and closed position. Laug does show a support of adjustable length but this is to allow the scaffolding to be assembled in a variety of open positions. In the closed position the Laug scaffolding, like the ladders of Guerette and Willett simply lies on the ground in the way of customers and workers.

While it may be that the Examiner has found all the elements of the claimed invention in three different patents, the Examiner has done so with the benefit of seeing Applicants' invention and with impermissible hind sight. There is no suggestion or reason to combine these references. The Examiner has combined a scaffold with a ladder to create a ladder that stands in the closed position. In general one skilled in the art would not be inclined to combine ladders and scaffolding, and in particular in this case, since scaffolding is generally disassembled when in the closed position (i.e. it does not stand when closed), there is no motivation to combine Laug with Guerette and Willett. "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the

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combination." MPEP 2143.01 citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). The nature of the problem solved by the current invention (standing in the open and closed position) is different than the problems solved by the cited references, therefore there would be no motivation to combine these references. The Examiner has not provided any basis for these references to be combined.

With respect to claim 11 in particular, the support in the Laug scaffolding only supports the stairway in the unfolded position, while the claim requires that it support a stairway section in both folded (i.e. collapsed or closed) and unfolded (i.e. open) position.

The age of the various art in this field is also relevant to obviousness. Rolling and collapsible ladders have been in the prior art for many years. In fact, one of the references cited by the examiner is over eighty years old. There have been hundreds of variations on the various basic ladders. Simply put, if Applicants' improved invention were obvious to those skilled in the art, such a collapsible rolling ladder that stands in both the open and closed position would surely have been brought to market before now. The fact that there has been no such ladder, combined with the market success described below, is strong evidence that the current invention is not obvious.

In addition, as suggested by the Examiner, Applicants have amended each of the independent claims to include castors on the ladder section.

Finally, as further evidence of non-obviousness Applicants submits as Exhibit A a statement demonstrating the commercial success of the invention in the marketplace. This demonstrates that the invention fulfilled a need in the marketplace, which if it were "obvious" would readily have been fulfilled by the market prior to Applicants' invention.

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In view of the arguments and amendments set forth above Applicants request that the Examiner allow the claims as amended herein.

2. Rejection of Dependent Claims

Dependent claims 2-10, 12-18 and 20-21 stand rejected based on § 103(a). Applicants believe that based on the arguments and amendments with respect to the independent claims above, that these dependent claims are now allowable.

It is respectfully submitted that all claims in the application are allowable.